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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 7th March, 1986:—

I

BILL No. X OF 1986

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Constitution (Amendment) Act, 1986.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of article 311.

2. In article 311 of the Constitution, part (c) of the second proviso to clause (2) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Article 311 of the Constitution provides for the dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. But it has provided that no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Other safeguards have also been provided to ensure natural justice.

However, in part (c) of the second proviso to clause (2) of the said article it has been provided that no such inquiry shall be necessary if the President or Governor, as the case may be, is satisfied that in the interest of the security of State it is not expedient to hold such inquiry. This, it is felt, is an anachronism and likely to do mischief. The object of the Bill is to do away with this provision.

CHITTA BASU

I

BILL NO. VII OF 1986

A Bill to repeal the Police Act, 1861.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Police (Repeal) Act, 1986. Short title.

2. The Police Act, 1861 is hereby repealed. Repeal of Act 5 of 1861.

STATEMENT OF OBJECTS AND REASONS

The Police Act, 1861, was enacted by the Imperialist rulers of our country with the primary objective of putting down any struggle for freedom and other democratic reforms. India has attained freedom and has set new goals for ushering in radical transformation in the socio-economic structure. The Police Act, 1861, which is still in force, is an anachronism viewed in this background. The Police Commission has also recommended for the enactment of a new law in keeping with the new socio-economic objectives. The repeal of the Act is, therefore, urgently called for.

Hence, this Bill.

CHITTA BASU

III

BILL No. XI OF 1986

A Bill to regulate certain conditions of service of the Chief Election Commissioner.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Chief Election Commissioner (Conditions of Service) Act, 1986. Short title.

2. The Chief Election Commissioner shall be appointed by the President on the recommendation of a Committee consisting of the Chief Justice of India, the Prime Minister, the Leader of Opposition in each House or, if there is no such leader, one Member each from each House of Parliament elected by Members of the Opposition parties in such House. Appointment of Chief Election Commissioner.

3. The Chief Election Commissioner shall hold office for a term of six years from the date on which he enters upon his office: Tenure of office of Chief Election Commissioner.

Provided that he may, at any time by writing under his hand addressed to the President, resign his office.

Salary and other conditions of service of Chief Election Commissioner.

4. Save as otherwise expressly provided in this Act, the salary and other conditions of service of the Chief Election Commissioner shall be such as are specified in the Second Schedule to the Constitution in respect of the Chief Justice of India.

Kinds of leave admissible to Chief Election Commissioner.

5. Subject to the provisions of this Act, leave granted to the Chief Election Commissioner may at his option, be either—

(*a*) leave on full allowances;

(*b*) leave on half allowances; or

(*c*) leave, partly on full allowances and partly on half allowances.

Explanation,—For the purposes of this Section any period of leave on full allowances shall be reckoned as double the period of leave on half allowances.

Period of leave admissible to Chief Election Commissioner.

6. The maximum period of leave which may be granted to the Chief Election Commissioner at one time shall be, in the case of leave on full allowances, five months and in case of leave with allowances of any other kind, sixteen months.

Grant of leave not due.

7. Subject to section 6, leave on half allowances may be granted to the Chief Election Commissioner in excess of the leave due to him—

(*i*) on medical grounds; or

(*ii*) otherwise than on medical grounds for a period not exceeding six months, or for two or more periods not exceeding in the aggregate six months, during the whole period of his service:

Provided that no such leave shall be granted if the Chief Election Commissioner is not expected to return to duty at the end of such leave and earn the leave so granted.

Special disability leave.

8. Special disability leave may be granted to the Chief Election Commissioner under such circumstances, on such allowances and for such periods as may be prescribed by rules made under this Act.

Extraordinary leave.

9. Extraordinary leave may be granted to the Chief Election Commissioner for a period not exceeding six months but no salary or allowances shall be payable to him in respect of such leave.

Maintenance of Leave account.

10. A leave account shall be kept for the Chief Election Commissioner showing therein the amount of leave due to him.

Authority competent to grant or refuse leave.

11. The authority competent to grant or refuse leave to the Chief Election Commissioner or to revoke or curtail the leave already granted to him shall be the President.

Leave allowances.

12. (*1*) The monthly rate of leave allowances payable to the Chief Election Commissioner while on leave on full allowances shall be for the first forty-five days of such leave at a rate equal to the monthly rate of the salary and thereafter three thousand rupees.

(*2*) The monthly rate of leave allowances payable to the Chief Election Commissioner while on leave on half allowances shall be two thousand rupees.

Pension Payable to Chief Election Commissioner.

13. The Chief Election Commissioner shall on his retirement be eligible to a pension of five thousand rupees per annum for each completed year of service as the Chief Election Commissioner, to be computed from the date on which he enters upon the office of the Chief Election Commissioner:

Provided that where the Chief Election Commissioner, at the time of his appointment, is in receipt of a pension in respect of any previous service under the Union or a State, the aggregate amount of his pension shall not exceed thirtysix thousand rupees per annum.

Power to make rules.

14. (*1*) The Central Government shall make rules for carrying out the purposes of this Act.

(*2*) Every rule made under this Act by the Central Government shall be laid as soon as may be, after it is made, before each House of Parliament while it is in Session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or to be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Clauses (2) and (5) of article 324 of the Constitution make the intention of the founding fathers of the Constitution clear. The intention was that Parliament should enact a law prescribing the conditions of service, the mode of appointment and tenure of office of the Election Commissioners. Pending such enactment, the conditions of service and tenure of office of the Election Commissioners shall be such as the President may by rule determine.

Such law has not been made by Parliament as yet. Controversies are raging regarding the mode of appointment of the Chief Election Commissioner. At present, the President appoints the Chief Election Commissioner as advised by the Prime Minister. The position and authority of the Chief Election Commissioner are similar to those of the Chief Justice of India. The Chief Election Commissioner, on whom rests the responsibility for ensuring free and fair elections, should be a person of high integrity and courage and free from partisan bias or influences. The existing mode of appointment by the President only on the advice of the Prime Minister leaves room for partisan choice. This naturally may be an inhibiting factor in the independent functioning of the appointee and, to that extent, the present mode of appointment reduces the credibility of the appointee. The appointment of the Chief Election Commissioner by the President as recommended by a Committee consisting of the Prime Minister, Leader of Opposition and the Chief Justice of India would provide reasonable safeguard against the possible misuse of power by the ruling party in matters relating to the appointment of Chief Election Commissioner. It is, therefore, felt that to put an end to such controversies a law should be enacted by Parliament as soon as possible.

Hence, this Bill.

CHITTA BASU

FINANCIAL MEMORANDUM

Clause 4 provides for salary and other conditions of service of the Chief Election Commissioner. Clause 5, 8 and 9 of the Bill entitle the Chief Election Commissioner to various kinds of leave of absence on full or half allowances. Clause 12 prescribes the leave allowances payable to him. Clause 13 provides for payment of pension to him. These provisions when brought into operation are likely to involve some expenditure from the Consolidated Fund of India, but it is not possible at this stage to calculate the additional burden on this account. However, a recurring expenditure of about rupees one lakh is likely to be incurred annually from the Fund.

No non-recurring expenditure is likely to be involved on this account.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Since the rules which may be made will be of routine and administrative nature, the delegation of legislative power is thus of a normal character.

SUDARSHAN AGARWAL,
Secretary-General.

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